

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

May 9, 2001

LB 465

discussing that in a committee amendment...I am sorry, 77-5016. We enact that as part of the TERC Act, and in that instance, the existing language is quite clear and quite plain that we only intended that there be a rebuttable presumption and that be based on the standard of unreasonable and arbitrary action, and we will have some additional language to make it clear that we expect that there should not be an additional burden placed upon a person appealing from one of those decisions. If they have any evidence on their side, then the person supporting the decision appealed from should be required to go forward and would win, in that instance, unless it can be shown that their decision was arbitrary or unreasonable. So we're proposing to repeal 77-1511 in an effort to suggest to the court that we think the language that they have developed concerning a burden of proof is inappropriate and attempted to restate that as additional language that we will suggest to you as a part of 77-5016. Those were the provisions of LB 465 as introduced. There is a committee amendment.

SENATOR CUDABACK: Thank you, Senator Wickersham. Senator Wehrbein. I am sorry, Mr. Clerk. Senator Wickersham, you are recognized to open on the committee amendments to LB 465.

SENATOR WICKERSHAM: Mr. President, the committee amendments are a white copy of the bill. That does not mean we're replacing every thing that was in the original bill. The committee amendments, while they do gut and replace, do maintain in place the language concerning the referees that was in the green copy of the bill, and one of the other issues addressed in the committee amendments, as I've indicated, is the repeal of 77-1511; the addition to that topic in the committee amendments is language added to 77-5016 which, as I've indicated, and you can read on page 11 of the committee amendments, on lines 12 through 17, is intended to make clear that we believe that in an appeal that the person appealing, if they present any evidence that the decision that they are appealing from was incorrect, then the party that rendered the original decision should be required to defend their decision. Now we believe that the fundamental underlying rule that the person or the board rendering the original decision should be upheld unless their decision is determined to be arbitrary and unreasonable is